

## **Senate Bill No. 49**

### **CHAPTER 245**

An act to amend Sections 51203, 51283, 51283.4, and 51283.5 of the Government Code, relating to land conservation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 2005. Filed with  
Secretary of State September 22, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 49, Machado. Land conservation contracts.

Existing law makes the current fair market valuations required to determine the cancellation fee for removing land from a Williamson Act conservation contract subject to appeal to the county board of equalization. Existing law requires the county assessor to send a notice to the assessee that indicates the current fair market value of the land as though it were free of the contractual restriction and to notify the landowner and the Department of Conservation of the opportunity to request formal review from the assessor. Existing law permits the Department of Conservation or the landowner, if either believes that the current fair market valuations are inaccurate, to request formal review from the county assessor in the county considering the cancellation petition. Existing law permits the assessor to formally review the valuation pursuant to specified procedures and to recompute the cancellation fee, as specified.

This bill would require the county assessor to formally review the valuation upon receiving a request for formal review if he or she determines that additional information submitted by the requesting party may have a material effect on the valuation of the property, thereby imposing a state-mandated local program. It would also make other related changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 51203 of the Government Code is amended to read:

51203. (a) The assessor shall determine the current fair market value of the land as if it were free of the contractual restriction pursuant to Section 51283. The Department of Conservation or the landowner, also referred to in this section as “parties,” may provide information to assist the assessor to determine the value. Any information provided to the assessor shall be served on the other party, unless the information was provided at the request of the assessor, and would be confidential under law if required of an assessee.

(b) Within 45 days of receiving the assessor’s notice pursuant to subdivision (a) of Section 51283 or 51283.4, if the Department of Conservation or the landowner believes that the current fair market valuation certified pursuant to subdivision (b) of Section 51283 or Section 51283.4 is not accurate, the department or the landowner may request formal review from the county assessor in the county considering the petition to cancel the contract. The department or the landowner shall submit to the assessor and the other party the reasons for believing the valuation is not accurate and the additional information the requesting party believes may substantiate a recalculation of the property valuation. The assessor may recover his or her reasonable costs of the formal review from the party requesting the review, and may provide an estimate of those costs to the requesting party. The recovery of these costs from the department may be deducted by the city or county from the cancellation fees received pursuant to this chapter prior to transmittal to the Controller for deposit in the Soil Conservation Fund.

(1) If no request is made within 45 days of receiving notice by certified mail of the valuation, the assessor’s valuation shall be used to calculate the fee.

(2) Upon receiving a request for formal review, the assessor shall formally review his or her valuation if, based on the determination of the assessor, the information may have a material effect on valuation of the property. The assessor shall notify the parties that the formal review is being undertaken and that information to aid the assessor’s review shall be submitted within 30 days of the date of the notice to the parties. Any information submitted to the assessor shall be served on the other party who shall have 30 days to respond to that information to the assessor. If the response to the assessor contains new information, the party receiving that response shall have 20 days to respond to the assessor as to the new information. All submittals and responses to the assessor shall be served on the other party by personal service or an affidavit of mailing. The assessor shall avoid ex parte contacts during the formal review and shall report any such contacts to the department and the landowner at the same time the review is complete. The assessor shall complete the review no later than 120 days of receiving the request.

(3) At the conclusion of the formal review, the assessor shall either revise the cancellation valuation or determine that the original cancellation valuation is accurate. The assessor shall send the revised valuation or notice of the determination that the valuation is accurate to the department,

the landowner, and the board or council considering the petition to cancel the contract. The assessor shall include a brief narrative of what consideration was given to the items of information and responses directly relating to the cancellation value submitted by the parties. The assessor shall give no consideration to a party's information or response that was not served on the other party. If the assessor denies a formal review, a brief narrative shall be provided to the parties indicating the basis for the denial, if requested.

(c) For purposes of this section, the valuation date of any revised valuation pursuant to formal review or following judicial challenge shall remain the date of the assessor's initial valuation, or his or her initial recomputation pursuant to Section 51283.4. For purposes of cancellation fee calculation in a tentative cancellation as provided in Section 51283, or in a recomputation for final cancellation as provided in Section 51283.4, a cancellation value shall be considered current for one year after its determination and certification by the assessor.

(d) Notwithstanding any other provision of this section, the department and the landowner may agree on a cancellation valuation of the land. The agreed valuation shall serve as the cancellation valuation pursuant to Section 51283 or Section 51283.4. The agreement shall be transmitted to the board or council considering the petition to cancel the contract.

(e) This section represents the exclusive administrative procedure for appealing a cancellation valuation calculated pursuant to this section. The Department of Conservation shall represent the interests of the state in the administrative and judicial remedies for challenging the determination of a cancellation valuation or cancellation fee.

SEC. 2. Section 51283 of the Government Code is amended to read:

51283. (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties, that upon their request, the assessor shall provide all information relevant to the valuation, excluding third-party information. If any information is confidential or otherwise protected from release, the department and the landowner shall hold it as confidential and return or destroy any protected information upon termination of all actions relating to valuation or cancellation of the contract on the property. The notice shall also advise the landowner and the department of the opportunity to request formal review from the assessor.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county

treasurer upon cancellation. That fee shall be an amount equal to 12½ percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first two million thirty-six thousand dollars (\$2,036,000) of revenue paid to the Controller pursuant to subdivision (e) in the 2004-05 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of all of the following:

(1) The cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(3) Program support costs of this chapter as administered by the Department of Conservation.

(4) Program support costs incurred by the Department of Conservation in administering the open-space subvention program (Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2).

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d) of this section and subdivision (b) of Section 51203. The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a

certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

SEC. 3. Section 51283.4 of the Government Code is amended to read:

51283.4. (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the clerk of the board or council shall record in the office of the county recorder of the county in which is located the land as to which the contract is applicable a certificate of tentative cancellation, which shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at the time that specified conditions and contingencies are satisfied, a description of the conditions and contingencies which must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, the fee shall be recomputed as of the date of notice described in subdivision (b) or the date the landowner requests a recomputation. A landowner may request a recomputation when he or she believes that he or she will be able to satisfy the conditions and contingencies of the certificate of cancellation within 180 days. The board or council shall request the assessor to recompute the cancellation valuation. The assessor shall recompute the valuation, certify it to the board or council, and provide notice to the Department of Conservation and landowner as provided in subdivision (a) of Section 51283, and the board or council shall certify the fee to the county auditor. Any provisions related to the waiver of the fee or portion thereof shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of the notice, and upon a determination that the conditions and contingencies have been satisfied, the board or council shall execute a certificate of cancellation of contract, cause the certificate to be recorded, and send a copy to the Director of Conservation.

(c) If the landowner has been unable to satisfy the conditions and contingencies enumerated in the certificate of tentative cancellation, the landowner shall notify the board or council of the particular conditions or

contingencies he or she is unable to satisfy. Within 30 days of receipt of the notice, and upon a determination that the landowner is unable to satisfy the conditions and contingencies listed, the board or council shall execute a certificate of withdrawal of tentative approval of a cancellation of contract and cause the same to be recorded. However, the landowner shall not be entitled to the refund of any cancellation fee paid.

SEC. 4. Section 51283.5 of the Government Code is amended to read:

51283.5. (a) The Legislature finds and declares that cancellation fees should be calculated in a timely manner and disputes over cancellation fees should be resolved before a city or county approves a tentative cancellation. However, the city or county may approve a tentative cancellation notwithstanding an assessor's formal review or judicial challenge to the cancellation value or fee.

(b) If the valuation changes after the approval of a tentative cancellation, the certificate of tentative cancellation shall be amended to reflect the correct valuation and cancellation fee.

(c) If the landowner wishes to pay a cancellation fee when a formal review has been requested, he or she may pay the fee required in the current certificate of cancellation and provide security determined to be adequate by the Department of Conservation for 20 percent of the cancellation fee based on the assessor's valuation. The board or council shall hold the security and release it immediately upon full payment of the cancellation fee determined pursuant to Section 51203.

(d) The city or county may approve a final cancellation notwithstanding a pending formal review or judicial challenge to the cancellation valuation or fee. The certificate of final cancellation shall include the following statements:

(1) That formal review or judicial challenge of the cancellation valuation or fee is pending.

(2) That the fee may be adjusted, based upon the outcome of the review or challenge.

(3) The identity of the party who will be responsible for paying any additional fee or will receive any refund.

(4) The form and amount of security provided by the landowner or other responsible party and approved by the Department of Conservation.

(e) Upon resolution, the landowner or the party identified in the certificate shall either pay the balance owed to the county treasurer, or receive from the county treasurer or the controller any amount of overpayment, and shall also be entitled to the immediate release of any security.

(f) (1) If a party does not receive the notice required pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed within three years of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283, or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation of the board or council's recorded certificate of final cancellation.

(2) If a party did receive the required notice pursuant to Section 51203, 51283, 51283.4, or 51284, a judicial challenge to the cancellation valuation may be filed only after the party has exhausted his or her administrative remedies through the formal review process specified in Section 51203, and only within 180 days of the latest of the applicable following events:

(A) The board or council certification of the fee pursuant to subdivision (b) of Section 51283 or for fees recomputed pursuant to Section 51283.4, the execution of a certificate of cancellation under that section.

(B) The date of the assessor's determination pursuant to paragraph (3) of subdivision (b) of Section 51203.

(C) The service of notice to the Director of Conservation or the board or council's recorded certificate of final cancellation.

SEC. 5. The Legislature finds and declares that the amendments made by Chapter 794 of the Statutes of 2004 or by this act shall not apply to petitions that have been accepted as complete pursuant to Section 51284.1 of the Government Code prior to January 1, 2005.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act contains amendments that were inadvertently omitted from the measure enacting Chapter 794 of the Statutes of 2004. In order for the formal review process of land conservation contract cancellation to work properly and to ensure certainty in the results for local agencies, landowners, and the Department of Conservation, it is necessary that this act take effect immediately.